STATE OF SOUTH DAKOTA
M. MICHAEL ROUNDS, GOVERNOR

January 18, 2008

Penny Coleman
Acting General Counsel
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, D.C. 20005

Dear Penny,

This letter is in response to the request for public comment on proposed rules that would change the definition of the term "electronic or electromechanical facsimile" as published in the Federal Register of October 24, 2007. I appreciate the opportunity to provide these comments on the proposed rules.

I concur with the National Indian Gaming Commission (Commission) that there needs to be a distinction between Class II and Class III gaming.

I concur with the Commission that facsimiles of bingo is not Class II gaming.

I concur with the Commission that electronic gaming in which a player or players compete against a machine and not against other players, is not bingo and should not be considered Class II gaming.

I concur with the Commission that the statutory language of IGRA lacks clarity between Class II and Class III gaming.

I concur with the Commission that technological advances have greatly increased the speed with which bingo can be played and have made the experience very similar to the experience of playing conventional slot machines.

I concur with the Commission that, because a tribe can conduct Class III gaming only in accordance with an approved tribal-state compact, it is important to distinguish Class II gaming from Class III gaming. I also concur with the Commission that the distinction between Class II and Class III gaming is currently often unclear.

I also concur with the Commission that the success of Indian gaming under IGRA depends upon tribes, states, and manufacturers being able to recognize when games fall within the ambit of tribal-state compacts and when they do not.

I concur with the Commission that one of the defining characteristics of the game of bingo is that the winner is the first person to cover a designated arrangement of numbers or patterns and that implicit in this is a requirement for the player to make some overt action to win the game.

I disagree that, in many cases, tribal gaming regulatory authorities are better suited than the NGIC or state gaming regulatory authorities to certify laboratories to test gaming devices for compliance with NIGC rules and applicable state gaming statutes. Certainly, in our state, most tribal gaming commissions have limited resources. Also, the tribal gaming commission is not as objective as the NIGC. The tribe would have a vested interest in getting as many types of games or devices approved as quickly as possible for play in its gaming establishment(s). Many tribal gaming regulators are also subject to heavy political pressure from other tribal leaders to make decisions based on factors other than stringent regulation of tribal gaming.

There is no requirement in the proposed rules for a state to be notified when a game has been certified as a Class II device or what credentials the testing laboratory would have.

There is opportunity in the proposed rules for a state to appeal a decision by a tribally selected laboratory or to have a device tested by an independent laboratory.

The rules should include a requirement that copies of testing laboratory reports be provided to the governor or a state gaming regulatory agency designated by the governor.

I appreciate the opportunity to comment on the proposed rules, which are of great importance to the NGIC and the tribes and states which have or may enter into gaming compacts.

Sincerely,

M. Michael Rounds

# STATE OF SOUTH DAKOTA
M. MICHAEL ROUNDS, GOVERNOR

Fax Number – 605.773.5844

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PAGES (including cover sheet): 3

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Special Instructions:

Original being mailed: No